

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MARCUS DILLARD,)
)
Plaintiff,)
)
v.) Case No. CIV-20-01037-PRW
)
FTC OKLAHOMA CITY TRANSFER)
CENTER,)
)
Defendant.)

ORDER

On November 16, 2020, United States Magistrate Judge Amanda Maxfield Green issued a Report and Recommendation (Dkt. 7) recommending dismissal of this action for failure to pay the \$400.00 filing fee and for failure to comply with this Court's Order (Dkt. 4) directing him to cure such deficiency by no later than November 2, 2020. The Magistrate Judge advised Plaintiff that he had a right to object to the Report and Recommendation (Dkt. 7) by November 30, 2020, and that failure to make a timely objection would waive any right to appellate review.

On November 30, 2020, the Court Clerk's Office filed Plaintiff's Objection to Dismissal (Dkt. 8). Plaintiff's objection is dated November 20th, and the envelope is postmarked November 23rd.¹ The sole basis for Plaintiff's objection is that "[t]he \$400.00

¹ Pl.'s Obj. to Dismissal (Dkt. 8) at 1–2.

was mailed in to your Clerk[’]s Office . . . from [his] wife[,] Chamika Dillard” and “should’ve [been] received” by now.²

The Court must now resolve Plaintiff’s objection by “mak[ing] a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”³ Only then may the Court “accept, reject or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.”⁴

The Court has verified with the Court Clerk’s Office that it has received no check associated with this case or with the Dillard name during the months of October, November, and December. At this point, it has been twelve days since Plaintiff asserted that the Court Clerk’s Office “should’ve received” his wife’s check. If the check was mailed prior to November 20th, the Court agrees with Plaintiff that the Court Clerk should have received it by now. Because there is no check, there is no basis for sustaining Plaintiff’s objection or for rejecting the Magistrate Judge’s recommendation.

Accordingly, upon *de novo* review, the Court:

- (1) **OVERRULES** Plaintiff’s Objection to Dismissal (Dkt. 8);
- (2) **ADOPTS** the Report and Recommendation (Dkt. 7) issued by the Magistrate Judge on November 16, 2020; and
- (3) **DISMISSES WITHOUT PREJUDICE** Plaintiff’s action for failure to comply with the Magistrate Judge’s Order (Dkt. 4) either to pay the \$400.00 filing fee or to submit an application to proceed *in forma pauperis*.

² *Id.* at 1.

³ 28 U.S.C. § 636(b)(1); *see* Fed. R. Civ. P. 72(b)(3).

⁴ 28 U.S.C. § 636(b)(1).

IT IS SO ORDERED this 2nd day of December, 2020.



PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE